

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 182 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DK SANDHU BROTHERS

Versus

VAIDYA PATVARDHAN & CO.

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Appearance:

MR PB MAJMUDAR for Petitioner

M/S THAKKAR ASSOC. for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 12/03/96

ORAL JUDGEMENT

1. The Second Joint Civil Judge, Senior Division, Baroda has vide impugned order dated 18th December, 1995 stayed the execution proceeding till the disposal of the Special Civil Suit No. 1018 of 1993. It appears that the petitioner decree holder has instituted earlier in point of time Summary Suit No. 2112 of 1990 in the Bombay High Court against the present respondents. In

such suit the present respondents appeared and a consent decree was passed by the Division Bench. As per the consent terms, the present respondents who were the defendants in the suit were directed to pay Rs. 2,78,860 with further interest at the rate of 18 per cent per annum from 1.12.1993 till the payment. It appears that the respondent defendants had paid only one installment of Rs. 58,860/- and subsequently they had paid Rs. 18,000/- by way of installment. Thereafter, they failed to pay the balance amount and hence the decree was got transferred to the Baroda Court and the same was sought to be executed by the aforesaid execution proceedings. In the meanwhile, the respondents have instituted Special Civil Suit No. 1018 of 1993 against the present petitioner alleging that the respondents were entitled to recover certain amount from the petitioner. The respondents have thereafter applied for stay of further proceeding and by order below Exhibit 12, the learned judge has passed the impugned order staying the Darkasth proceeding till the suit of the respondent is disposed of.

2. In my opinion, the aforesaid exercise of power is absolutely uncalled for and unwarranted and is not permissible under any provisions of the Code of Civil Procedure. The learned Second Joint Civil Judge, Senior Division, Baroda, exceeded his jurisdiction and passed the order and the order is liable to be quashed and set aside. He must have realised that the decree passed by the Bombay High Court was a consent decree where the respondents defendants have consented to a decree being passed. If there was any amount due and payable to the respondents defendants by the plaintiff, they could have very well filed cross objections and/or could have objected to any decree being passed. In that view of the situation, the order passed by the learned trial judge is thoroughly misconceived and unsustainable and is hereby quashed and set aside.

3. Mr. N.K. Phawa, learned Counsel appearing for the respondents defendants - judgment debtor has, however, stated to the court that respondents are ready and willing to pay up the balance amount which now works out to Rs. 2,23,741/- firstly by depositing amount of Rs.. 33,200/- by 31st of March, 1996 in the Executing Court which the petitioners will be at liberty to withdraw and no objection from any party whatsoever shall be entertained by the executing court against whom action shall be taken against the judge of the executing court. Secondly, the respondents further undertake before this court as well as before the executing court in writing

that they shall pay up regularly balance amount of the decree by regular monthly installment of Rs. 20,000/per month and in case of any default in making such payment, the petitioner - judgment creditor shall be at liberty to proceed further with the execution proceeding. The executing court is once again warned not to pass any order in favour of any party whatsoever staying the execution proceeding or from permitting the petitioner from withdrawing the amount which may be deposited in the executing court. The hearing of the suit filed by the respondents is ordered to be expedited but not in any case before the full installments are paid up. Rule is made absolute accordingly. No costs.

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